STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL J. REGNIER, SR. and LINDA J. REGNIER,

Plaintiffs/Counter-Defendants-Appellees,

v

RICHARD J. PAYTER,

Defendant-Appellant,

and

WILDWOOD LAND MANAGEMENT COMPANY,

Defendant/Counter-Plaintiff-Appellant,

and

VINCENT FINAZZO and VINJON, INC.,

Defendants.

UNPUBLISHED
May 29, 2003

No. 233321
Wayne Circuit Court
LC No. 00-003534-CK

Before: Jansen, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

Following a jury trial, defendants, Richard J. Payter and Wildwood Land Management Company [hereinafter "Wildwood"],[1] appeal as of right from an amended judgment awarding plaintiffs $85,250 plus interest, a portion of their attorney fees, and costs in this specific

[1] Defendant Payter is the owner of defendant Wildwood.

performance, breach of contract, fraud, promissory estoppel, unjust enrichment, and breach of the Michigan Consumer Protection Act [hereinafter "MCPA"] case.[2] We affirm.

Plaintiffs leased property at 19097 Sibley Road in Brownstown Township from defendants, on an oral lease, from approximately August 1984 to June 24, 1998. Plaintiffs indicated that at the time they moved to the 19097 Sibley property in 1984, defendant Payter had given them an option to purchase the property. On June 24, 1998, defendants sold the Sibley property via land contract to Finazzo without allowing plaintiffs an opportunity to purchase the 19097 Sibley property. On June 30, 1998, defendant Payter gave plaintiffs a notice to quit and informed them that he had sold the property. From June 24, 1998 up until, at least, the time of trial plaintiffs lived on the property as tenants of Finazzo and then Vinjon.[3] On August 24, 1998 a consent judgment was filed in district court that provided plaintiffs were to be off the 19097 Sibley property by February 1999. The consent judgment was eventually set aside in February 2000, as a result of the proceedings initiated by plaintiffs in the present case.

Defendants' first issue on appeal is that the trial court erred in denying defendants' motion for Judgment Notwithstanding the Verdict (JNOV) or new trial with regard to plaintiffs' cause of action for promissory estoppel. We disagree.

We review de novo a trial court's decision on a motion for JNOV. *Morinelli v Provident Life & Accident Co*, 242 Mich App 255, 260; 617 NW2d 777 (2000). In reviewing the trial court's decision, this Court must view the testimony and all legitimate inferences from it in the light most favorable to the nonmoving party. *Forge v Smith*, 458 Mich 198, 204; 580 NW2d 876 (1998)*; Kallabat v State Farm Mutual Automobile Ins Co*, ___ Mich App ___; ___ NW2d ___ (Docket No. 230627, released 4/3/03) slip op p 2. If reasonable jurors could have honestly reached different conclusions, the jury verdict must stand. *Central Cartage Co v Fewless*, 232 Mich App 517, 524; 591 NW2d 422 (1998). Only if the evidence fails to establish a claim as a matter of law is JNOV appropriate. *Forge*, *supra*, 458 Mich 204; *Chiles v Machine Shop, Inc*, 238 Mich App 462, 469; 606 NW2d 398 (1999).

Whether to grant a new trial is in the trial court's discretion, and this Court will not reverse a trial court's decision absent a clear abuse of that discretion. *Kelly v Builders Square, Inc*, 465 Mich 29, 34; 632 NW2d 912 (2001); *Setterington v Pontiac General Hosp*, 223 Mich App 594, 608; 568 NW2d 93 (1997). An abuse of discretion occurs when the decision was so violative of fact and logic that it evidenced a perversity of will, a defiance of judgment, or an exercise of passion or bias, *Bean v Directions Unlimited, Inc*, 462 Mich 24, 34-35; 609 NW2d 567 (2000), or the trial court misapplied or misunderstood the law, *Bynum v ESAB Group, Inc*, 467 Mich 280, 283; 651 NW2d 383 (2002).

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[2] Vincent Finazzo and Vinjon, Inc. [hereinafter "Vinjon"] were original named defendants, but on September 5, 2000, the trial court granted Finazzo and Vinjon's motion for summary disposition with regard to all claims against them. Thus, only Payter and Wildwood will be referred to as defendant and collectively as defendants.

[3] At some point, Finazzo quit claimed his interest in the Sibley property to Vinjon. Finazzo and John Santoro own Vinjon.

MCR 2.611(A) provides, in relevant part, that a new trial may be granted on all or some of the issues when the substantial rights of a party were materially affected and there was:

> (e) A verdict or decision against the great weight of the evidence or contrary to law.
>
> * * *
>
> (g) Error of law occurring in the proceedings, or mistake of fact by the court.

The jury's verdict should not be set aside if there is competent evidence to support it, and the trial court cannot substitute its judgment for that of the factfinder. *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 194; 600 NW2d 129 (1999). The issue usually involves matters of credibility or circumstantial evidence, *In re Robinson*, 180 Mich App 454, 463; 447 NW2d 765 (1989), and if there is conflicting evidence the question of credibility ordinarily should be left for the factfinder, *Rossien v Berry*, 305 Mich 693, 701; 9 NW2d 895 (1943); *Whitson v Whiteley Poultry Co*, 11 Mich App 598, 601; 162 NW2d 102 (1968).

Defendants first argue that the trial court allowed plaintiffs to claim and recover reliance damages for improvements made to the 19097 Sibley property from 1984-1996, even though no evidence was submitted that a clear and definite promise regarding an option to purchase was made to plaintiffs during that time frame. "In order to invoke promissory estoppel**,** the party relying on it must demonstrate that (1) there was a promise, (2) the promisor reasonably should have expected the promise to cause the promisee to act in a definite and substantial manner, (3) the promisee did in fact rely on the promise by acting in accordance with its terms, and (4) and the promise must be enforced to avoid injustice." *Crown Tech v D&N Bank*, 242 Mich App 538, 548-549; 619 NW2d 66 (2000) citing *Lovely v Dierkes*, 132 Mich App 485, 489; 347 NW2d 752 (1984). To support a promissory estoppel claim, a promise must be clear and definite. *State Bank of Standish v Curry*, 442 Mich 76, 85; 500 NW2d 104 (1993); *Schmidt v Bretzlaff*, 208 Mich App 376, 379; 528 NW2d 760 (1995). "A promise is a manifestation of intention to act or refrain from acting in a specified manner, made in a way that would justify a promisee in understanding that a commitment had been made." *Schmidt, supra*, 208 Mich App 379.

Viewing the testimony and all legitimate inferences, in a light most favorable to plaintiffs, we find there was a clear and definite promise that defendants thought plaintiffs would rely on, which plaintiffs relied on in 1984 when they moved into 19097 Sibley property, and there were substantial damages caused to plaintiffs when that promise was broken. Plaintiff Michael Regnier testified that defendant told plaintiffs when they were moving into the 19097 Sibley property that it was their responsibility to maintain the house because it was going to be their house. Plaintiff Michael Regnier indicated that the agreement he had with defendant Payter started from the beginning in 1984 when plaintiffs moved into the 19097 Sibley property. According to plaintiffs, the purchase price was to be $125,000, with a twenty percent down payment, and with ten percent being credited for maintenance and improvements. Plaintiff Linda Regnier testified that plaintiffs moved into the 19097 Sibley property because defendant Payter informed them that they would be able to buy the property. In 1989, plaintiff Michael Regnier testified that he wanted to make sure the agreement between plaintiffs and defendant Payter was still in "full force," obviously evidencing an agreement entered into prior to 1996.

Regarding the business, plaintiff Michael Regnier testified that if he was not able to purchase the property he would not have put all of the time and effort into his business that he did. Plaintiff Michael Regnier also testified that defendant Payter assured him that the agreement was still in force by saying "no problem" because they had a "gentleman's agreement." Plaintiffs both testified that improvements were made on the property, throughout the fifteen or sixteen year period, in reliance on an option to purchase that defendant Payter promised them. Defendant Payter clearly offered James Cummings an option, which shows that he was willing to at least give an option on a portion of the property. A review of the evidence, in a light most favorable to plaintiffs, supports that a clear and definite promise was made as early as 1984 to plaintiffs, which they relied on in moving to the 19097 Sibley property.

Defendant next argues that the great weight of the evidence establishes that defendant Payter did not promise plaintiffs an option to purchase the property. The jury's verdict should not be set aside because there is competent evidence to support it. *Ellsworth, supra*, 236 Mich App 194. There was conflicting evidence, and the question of credibility ordinarily should be left for the factfinder. *Rossien, supra*, 305 Mich 701; *Whitson, supra*, 11 Mich App 601. The trial court's determination that a verdict is not against the great weight of the evidence is given substantial deference, but this Court must analyze the record on appeal in detail. *Arrington v Detroit Osteopathic Hospital (On Remand)*, 196 Mich App 544, 560; 493 NW2d 492 (1992). As discussed, *supra*, there was competent testimony and evidence supporting that there was a promise by defendant, that defendant Payter knew or should have known plaintiffs would rely on the promise, plaintiffs did rely on the promise, and plaintiffs suffered damages in relying on that promise to plaintiff Michael Regnier's business and through money and efforts in maintenance. Therefore, the trial court did not abuse its discretion in denying defendants' motion for a new trial on the promissory estoppel claim.

Upon a de novo review, we find that the trial court properly denied defendants' motion for JNOV on the promissory estoppel claim. Further, the trial court did not abuse its discretion in denying defendants' motion for a new trial on the promissory estoppel claim.

Defendants' second issue on appeal is that the trial court erred in failing to grant defendants' motion for a JNOV and directed verdict with regard to plaintiffs' cause of action for unjust enrichment. We disagree.

As noted, *supra*, this Court reviews de novo a trial court's decision on a motion for JNOV viewing all inferences in a light most favorable to the nonmoving party. *Morinelli*, *supra*, 242 Mich App 260; *Forge, supra*, 458 Mich 198, 204; *Kallabat, supra*. Similarly, to the extent defendants are arguing the trial court erred in failing to direct a verdict, this Court reviews a trial court's denial of a directed verdict motion de novo. *Derbabian v S & C Snowplowing, Inc*, 249 Mich App 695, 701; 644 NW2d 779 (2002). A directed verdict is appropriate only when no factual question exists upon which reasonable minds could differ. *Cacevic v Simplematic Engineering Co (On Remand)*, 248 Mich App 670, 679-680; 645 NW2d 287 (2001). This Court reviews all the evidence presented up to the time of the motion to determine whether a question of fact existed, and, in doing so, the appellate court views the evidence in the light most favorable to the nonmoving party and grants the nonmoving party every reasonable inference and resolves any conflict in the evidence favor of the nonmoving party. *Kubczak v Chemical Bank & Trust Co*, 456 Mich 653, 663; 575 NW2d 745 (1998); *Thomas v McGinnis*, 239 Mich App 636, 643-644; 609 NW2d 222 (2000). Only when the evidence viewed fails to establish a

claim as a matter of law should the motion be granted. *Graves v Warner Bros*, 253 Mich App 486, 491; 656 NW2d 195 (2002).

The elements of a claim for unjust enrichment are: "(1) receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant." *Barber v SMH (US), Inc*, 202 Mich App 366, 375; 509 NW2d 791 (1993). Regarding unjust enrichment claims, the law operates to imply a contract in order to prevent unjust enrichment. *Barber*, *supra*, 202 Mich App 375. Defendants argue that there was no benefit conferred upon defendants that would be unjust for them to retain.

Plaintiff Michael Regnier testified that throughout the lease he maintained two and a half acres of land adjacent to his property for defendants and provided private security for defendant Payter's nursery. Plaintiffs testified that defendant Payter recognized the improvements being made to the 19097 Sibley property and that these improvements were a condition surrounding plaintiffs getting a ten percent credit on the purchase of the 19097 Sibley property. Clearly, defendant Payter would have recognized the lawn being maintained by plaintiffs, which is a benefit defendant Payter would have needed to ensure was completed. There was testimony that this was not an unconditional benefit conferred upon defendants. Thus, there was testimony supporting that there was a benefit conferred upon defendant Payter, he recognized this benefit, and that plaintiffs expected something in return for conferring the benefit upon defendants.

Defendants also contend that plaintiffs lacked clean hands. With regard to whether plaintiffs lacked clean hands, defendants' arguments are based on credibility, and the jury, clearly, found plaintiffs more credible on these issues. This unclean hands doctrine is "invoked by the Court in its discretion to protect the integrity of the Court." *Stachnik v Winkel*, 394 Mich 375, 386; 230 NW2d 529 (1979). Plaintiffs' award was not an error based on the unclean hands doctrine.

Defendants also argue that there was no evidence presented that plaintiffs suffered restitution damages. A person who has been unjustly enriched at the expense of another is required to make restitution to the other. *Michigan Educational Employees Mut Ins Co v Morris*, 460 Mich 180, 198; 596 NW2d 142 (1999). In plaintiffs' complaint, they allege that they suffered damages because defendants were unjustly enriched by receiving the benefits of plaintiffs' efforts and monies. There was testimony that benefits were conferred upon defendants, and that plaintiffs were damaged. Accordingly, sufficient evidence was presented that defendants were unjustly enriched and that plaintiffs were entitled to restitution.

In a light most favorable to plaintiffs, the jury could find that the evidence supports that defendants would be unjustly enriched if they were to keep the benefit of the value added to the property and the maintenance performed by plaintiffs, and that plaintiffs would lose the money and time they invested in the 19097 Sibley property. There was evidence establishing that a benefit was conferred upon defendant Payter, and that this same benefit resulted in an inequity to plaintiffs. Additionally, there was evidence that a benefit was conferred on defendants by plaintiffs, an appreciation by defendants of the benefit, and the acceptance and retention by defendants of the benefit under circumstances such that it would be inequitable for defendants' to retain the benefit without payment for its value. Sufficient evidence was introduced at trial that would have justified a conclusion that the detriment suffered by defendants was equal to or greater than the amount the jury awarded plaintiffs on the unjust enrichment claim. Therefore,

the trial court did not err in failing to direct a verdict or grant defendants' motion for JNOV with respect to plaintiffs' unjust enrichment claim.

Defendants' third issue on appeal is that the trial court erred in denying defendants' motion for JNOV or a new trial with regard to plaintiff s' cause of action under the MCPA. [4] We disagree.

The trial court did not err in denying defendants' motion for a JNOV or a new trial on plaintiffs' claim under the MCPA. The MCPA applies to defendants because "[t]rade or commerce" as used in the MCPA includes real property leases. MCL 445.902(d). Regarding plaintiffs' MCPA claim the jury was instructed that they needed to find that defendants violated one of the following MCL 445.903 subsections:

> (1) Unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce are unlawful and are defined as follows:
>
> (n) Causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction.
>
> (q) Representing or implying that the subject of a consumer transaction will be provided promptly, or at a specified time, or within a reasonable time, if the merchant knows or has reason to know it will not be so provided.
>
> (s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.
>
> (bb) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is.
>
> (cc) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

The MCPA is to be construed liberally to broaden a consumer's remedies. *Dix v American Bankers Life Insurance Co of Florida*, 429 Mich 410, 417-418; 415 NW2d 206 (1987).

With regard to MCL 445.903(1)(n), there was evidence presented that, when viewed in a light most favorable to plaintiffs, would establish that defendant Payter's deceptive actions regarding the 19097 Sibley property caused a probability of misunderstanding as to plaintiffs' legal rights, obligations, or remedies. As discussed, *supra*, there was evidence to support that

[4] As noted, *supra*, this Court reviews de novo a trial court's decision on a motion for JNOV viewing all inferences in a light most favorable to the nonmoving party. *Morinelli, supra*, 242 Mich App 260; *Forge, supra*, 458 Mich 198, 204; *Kallabat, supra*. Whether to grant a new trial is in the trial court's discretion, and its decision will not be reversed absent a clear abuse of that discretion. *Kelly, supra*, 465 Mich 34; *Setterington, supra*, 223 Mich App 608.

defendant Payter had made promises to plaintiffs regarding an option to purchase the 19097 Sibley property beginning in 1984. There was evidence that plaintiffs were confused with respect to their obligations and legal rights, and plaintiff Michael Regnier testified that he was under the impression that he had to buy the property if defendants were going to sell the property. Plaintiffs improved the property, and the jury could find that defendant caused them to be confused with regard to what their legal rights and obligations were on the property. Further, there was evidence that defendant Payter acted like he was going to sell the 19097 Sibley property to plaintiffs and that he was not going to sell elsewhere, in an attempt to prevent plaintiffs from exercising their legal rights.

With regard to MCL 445.903(1)(q), it could be found, based on the testimony, that defendants represented or at least implied that the 19097 Sibley property would be sold to plaintiffs in a certain time frame. There was testimony from plaintiff Michael Regnier that defendant Payter suggested that he would sell the Sibley property to plaintiffs "[v]ery soon." Further, there is evidence that, at the time this representation was made, defendant Payter already intended to sell the property to Finazzo. The jury could conclude that defendant Payter was being deceptive, in that he never intended to sell the property to plaintiffs, but rather knew he was selling to Finazzo or planned on selling to Finazzo.

With regard to MCL 445.903(1)(s), (bb), (cc), it could be found that defendant Payter failed to reveal a material fact or misrepresented a material fact that deceived plaintiffs in to believing affairs were other than they actually were, that plaintiffs could not have reasonably known of, and plaintiffs could have reasonably believed what they were promised by defendant Payter. There was evidence that pursuant to an agreement between defendant Payter and plaintiffs, plaintiffs performed several services on the property that were supposed to be in consideration of a $12,500 credit they were receiving towards a down payment on the 19097 Sibley house. It is recognized that the claims under (s) and (bb) are similar to the fraud claim in that reasonable reliance is required, and that the jury found for defendants on the fraud claim. However, on the fraud claim the jury was instructed that the burden is clear and convincing evidence, and on the MCPA claim the jury was instructed that it only required a preponderance of the evidence. Furthermore, the jury only had to find a violation of one of the provisions plaintiffs alleged that defendants violated.

Viewing the evidence, in a light most favorable to plaintiffs, there was evidence to establish that defendants violated the MCPA. The jury only needed to find that defendants violated one of the provisions that plaintiffs alleged violations of, and there is evidence to support violations of each of the listed provisions submitted to the jury. Therefore, the trial court did not err in denying defendants' motion for JNOV and did not abuse its discretion in denying defendants' motion for a new trial with regard to plaintiffs' MCPA claims.

Defendant's fourth issue on appeal is that the trial court erred in failing to grant remittitur on plaintiffs' claim of promissory estoppel. We disagree.

A ruling on a motion for remittitur premised on a claim that the damage award was excessive is reviewed for an abuse of discretion. *Palenkas v Beaumont Hosp*, 432 Mich 527, 531; 443 NW2d 354 (1989). The test for remittitur requires a court to examine whether the evidence submitted will support the jury award. *Phillips v Deihm*, 213 Mich App 389, 404, 541 NW2d 566 (1995).

The jury awarded plaintiffs $75,000 on the promissory estoppel claim, $10,000 on the unjust enrichment claim, and $30,000 on the MCPA claim. The trial court granted defendants' motion for remittitur with regard to the MCPA claim, reducing the damage award to $250. Defendants argue that the damages awarded on the promissory estoppel claim were improper because the jury was permitted to consider reliance damages prior to 1996, which was the date when there was first evidence of a clear and definite promise by defendant Payter to plaintiffs. As discussed, *supra*, there was evidence, before the jury, that a clear definite promise was made to plaintiffs by defendant Payter as early as 1984. Therefore, the trial court did not abuse its discretion in allowing the jury to consider reliance damages incurred prior to 1996 on the promissory estoppel claim.

Defendants also argue that the jury was permitted to consider several items, which cannot be considered reliance damages. Specifically, defendants contended that the pool, pole barn, moving expenses, and cutting the grass could not be considered reliance damages. However, defendants cite no case law or other authority for this argument. Therefore, the issue is abandoned. *Magee v Magee*, 218 Mich App 158, 161; 553 NW2d 363 (1996). "A party may not leave it to this Court to search for authority to sustain or reject its position." *Magee*, *supra*, 218 Mich App 161. A party may not merely announce its position and leave it to this Court to discover and rationalize the basis for the claim. *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984); see also *Manning v City of East Tawas*, 234 Mich App 244, 247 n 2; 593 NW2d 692 (1999), citing *Goolsby*, *supra*. Accordingly, the issue of whether remittitur was appropriate on these items is abandoned. Further, even if the issue was not abandoned the trial court did not abuse its discretion because the evidence submitted supported the jury award. *Phillips*, *supra*, 213 Mich App 404.

Plaintiffs' brief on appeal challenges the trial court's grant of remittitur on the MCPA claim. However, plaintiffs have not filed a cross-appeal, specifically, challenging the trial court's conclusion that the MCPA damage award was excessive, and defendants, the appellants here, merely agree with the trial court's conclusion that the damages were excessive with regard to the MCPA claim.[5] To preserve an issue for review, an appellee must file a cross-appeal on the issue. MCR 7.207; *Barnell v Taubman Co, Inc*, 203 Mich App 110, 123; 512 NW2d 13 (1993). Furthermore, this is not an "alternate ground for affirmance." *Middlebrooks v Wayne County*, 466 Mich 151, 166 n 41; 521 NW2d 774 (1994). Consequently, the issue of whether remittitur was properly granted on plaintiffs' MCPA claim is not properly before this court.

Defendants' final issue on appeal is that plaintiffs are barred, as a matter of law, from recovering damages under theories of promissory estoppel and unjust enrichment where the claim of damages is premised on an interest in land unsupported by a writing. We disagree. This presents a question of law**,** which we review de novo. *In re Jude*, 228 Mich App 667, 670; 578 NW2d 704 (1998).

Defendants argue that plaintiffs are barred from recovering under theories of promissory estoppel and unjust enrichment where the claim is premised on an interest in land unsupported

[5] Plaintiff did file a cross-appeal, but it was not challenging the grant of remittitur on the MCPA claim.

by a writing. This argument is without merit. In *Kitchen v Kitchen*, 465 Mich 654; 641 NW2d 645 (2002), our Supreme Court held that an oral license is revocable at will, and an irrevocable license or an easement "must be evidenced by a writing manifesting a clear intent to create an interest in land." *Kitchen, supra*, 465 Mich 661. This holding was based on the premise that "Michigan law generally requires that the grant of a permanent interest in land be in writing to be enforceable." *Kitchen, supra*, 465 Mich 659. In addition, the holding relies on the fact that a license is generally revocable at will by either the licensee or the licensor. *Id*. at 659-661. However, in the present case, the promise that the damages were accessed upon was for an oral option to purchase property. Under Michigan law, an option to purchase does not create an interest in land and is not within the statute of frauds. *Hague v DeLong*, 282 Mich 330, 333; 276 NW 467 (1937); *Marina Bay Condominiums v Schlegel*, 167 Mich App 602, 607; 423 NW2d 284 (1988). Thus, contrary to defendants' argument, the statue of frauds does not apply to the oral contract in question, and the absence of a writing does not bar plaintiffs' promissory estoppel or unjust enrichments claims. Consequently, plaintiffs' claims for unjust enrichment and promissory estoppel are not barred under *Kitchen, supra*.[6]

Affirmed.

/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly
/s/ Karen Fort Hood

[6] Plaintiffs argue, on appeal, that sanctions are appropriate. However, plaintiffs cite no case law or other authority for this argument. Therefore, the issue is abandoned. *Magee, supra*, 218 Mich App 161. "A party may not leave it to this Court to search for authority to sustain or reject its position." *Id*.